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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,120	01/14/2002	Bih-Chern Lin	BHT-3214-2	6865
7590	03/13/2006		EXAMINER	
Dougherty & Troxell ONE SKYLINE PLACE SUITE 1404 5205 LEESBURG PIKE FALLS CHURCH, VA 22041			ALI, SHUMAYA B	
			ART UNIT	PAPER NUMBER
			3743	
DATE MAILED: 03/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/043,120	LIN, BIH-CHERN	
	Examiner	Art Unit	
	Shumaya B. Ali	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 1/14/02.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: detailed action.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 2 recites the limitation "the shank" on page 7, line 22. There is insufficient antecedent basis for this limitation in the claim.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lester US Patent No. 5,928,198 in view of Parker US Patent No. 5,339,805

5. **As to claim 1, Lester discloses a tracheostomy assembly comprises a tracheal tube and an obturator (auxiliary device), where as the obturator have a pushing rod (fig.2, 2), a soft sleeve (fig.2, 23), a handle (fig.2, 28) and a fixing sleeve (fig.2, 29); said pushing rod is a flexible ("plastic" see col.2 lines 40-41) and elongate metallic rod (as to "metallic rod" applicant has not established why the limitation is critical to the invention, therefore, "a stiff but bendable resilient plastic material" as disclosed by Lester, see col.2 lines 40-41 would consider to meet the limitation because it would have been obvious to one of ordinary skills in the art to select different construction material as a matter of design choice.), is provided on an end thereof with**

said soft sleeve (fig.1, 23), and is provided on the other end thereof with a turning portion (fig.1, 12); said handle is provided on one side thereof with a notch (fig.3, 32), a hole (fig.3, 20 is between two slots or holes) is provided centrally of said notch; and said fixing sleeve is made of rubber (“plastic molded”, see claim 1 would consider within the scope of the invention since applicant has not established criticalities regarding specific material used for the sleeve, therefore it would have been obvious to one of ordinary skills in the art at the time the invention was made to consider the construction material of the sleeve as disclosed by Lester as an alternative material of choice); when said handle and said pushing rod are connected with each other (see fig.2), said flexible pushing rod is extended into an air inlet pipe of said larynx cover to abut against the bottom of said larynx cover and push it forwardly by means of said bottom poker of said soft sleeve, so that said forked opening on said front end of said soft sleeve abuts on a protrusion provided on an annular rubber pipe in said larynx cover (recitation of indented use), **however does not disclose** said soft sleeve is provided on the front end thereof with a forked opening and on the bottom thereof with a bottom poker; thereby said larynx cover is in an arciform shape without an opening in favor of operating of a physician or a nurse. **However, Parker teaches an oroesophageal guiding and aiding device (fig.1, 10) with structure equivalent to “forked opening” (fig.5, 22) and “a bottom poker” (fig.1, 30a). Parker teaches the guide element anatomically contoured to stop rearward progress of the guide element as it is pushed into the throat and to center and stabilize the guide element in a relatively fixed position with respect to the larynx such that the channel wall of the guide element is substantially aligned (see col.4 lines 20-45). Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the**

**device of Lester in view of Parker in order to provide a forked opening and a bottom poker to the auxiliary device for the purposes of facilitating rapid, accurate, blind access to the larynx such as for emergency intubation of a patent's trachea.**

6. **As to claim 2, Lester discloses** an auxiliary device for placing a larynx cover for anesthetization as in claim 20 1, wherein, the shank of said handle has curved recessed (fig.1, 34) portions for fingers to meet the human body engineering.

7. **As to claim 3, Lester discloses** an auxiliary device for placing a larynx cover for anesthetization as in claim 1, wherein, said fixing sleeve made of rubber ("plastic molded", see claim 1 would consider within the scope of the invention since applicant has not established criticalities regarding specific material used for the fixing sleeve, therefore it would have been obvious to one or ordinary skills in the art at the time the invention was made to consider the construction material of the fixing sleeve as disclosed by Lester as an alternative material of choice) is sleeve with tight binding action.

*Specification*

8. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of **50 to 150 words**. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

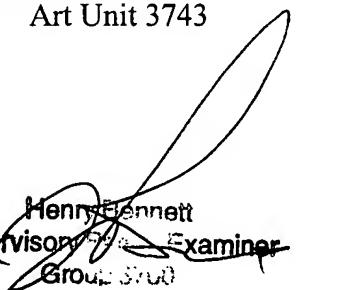
The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Shumaya B. Ali  
Examiner  
Art Unit 3743

  
Henry Bennett  
Supervisor  
Examiner  
Group 3743